

SERVICE DATE - LATE RELEASE MAY 26, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-32 (Sub-No. 88X)

BOSTON AND MAINE CORPORATION
— ABANDONMENT AND DISCONTINUANCE OF SERVICE EXEMPTION —
ROCKINGHAM AND HILLSBORO COUNTIES, NEW HAMPSHIRE

Decided: May 25, 2000

By petition filed on February 8, 2000, Boston and Maine Corporation (B&M) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon and to discontinue service over an approximately 2.95-mile line of railroad in Rockingham and Hillsborough Counties, NH, known as the Manchester and Lawrence Branch.¹ Notice of B&M's petition was served and published in the Federal Register on February 28, 2000, at 65 FR 10594. We will grant the exemption, subject to environmental and standard employee protective conditions.

In support of its petition, B&M claims that abandonment and discontinuance of service over the line will not adversely affect shippers. According to B&M, the sole shipper on the line transferred its facility to another site off the line in November 1998, and there has been no local or overhead traffic over the line since the transfer. B&M maintains that the abandonment will not sever its ability to connect with any of its other lines north of the point of abandonment because it has already been granted permission to abandon the northern connecting track.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. Moreover, an exemption will foster sound economic conditions and encourage efficient management by allowing B&M to avoid operating and maintaining an uneconomic rail line and

¹ Extending from milepost 4.65 to milepost 7.60 in Salem, NH, the line traverses U.S. Postal Service ZIP Code 03079 and includes the station of Salem, NH.

to use its assets more productively elsewhere on its system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy are not affected adversely.

Regulation is not necessary to protect shippers from an abuse of market power. There are no present shippers needing protection because there are no shippers on the line and the line has no overhead traffic. Moreover, there has been no allegation that there will be future traffic on the line necessitating the protection of shippers. Because we find no need to protect shippers from abuse of market power, we do not need to determine whether the transportation is of limited scope.

Labor Protection. Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of a statutory obligation to protect the interests of its employees. Accordingly, we will impose the employee protective conditions in Oregon Short Line R. Co. — Abandonment — Goshen, 360 I.C.C. 91 (1979), as a condition to granting this exemption.

Environmental Issues. B&M has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effects of the proposed action on the quality of the human environment.

SEA served an environmental assessment (EA) on April 7, 2000. In the EA, SEA notes that the Natural Resources Conservation Service (NRCS) has expressed concern regarding the impacts on the environment due to rail and tie removal occurring during salvage activity. Accordingly, SEA recommends that a condition be imposed that B&M further consult with NRCS to determine Best Management Practices for salvaging the right-of-way. In the EA, SEA also notes that the New Hampshire Department of Environmental Services (DES) has expressed concern regarding numerous sites for DES regulated facilities present along the right-of-way, contending that the right-of-way is comprised of Groundwater Hazard Inventory (GHWI) sites, Underground Storage Tanks (UST) facilities, and hazardous waste generator (RCRA) sites. Accordingly, SEA also recommends that, prior to any salvage activity, B&M further consult with DES to determine whether a GHWI site, UST facility, or RCRA site will be affected by any salvage activity occurring along the right-of-way. No comments were received in response to the EA.

We will impose the conditions recommended by SEA. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment by B&M of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line R. Co. — Abandonment — Goshen, 360 I.C.C. 91 (1979), and subject to the conditions that: (1) B&M further consult with NRCS to determine Best Management Practices for salvaging the right-of-way; and (2) prior to any salvage activity, B&M further consult with DES to determine whether a GHWI site, UST facility, or RCRA site will be affected by any salvage activity occurring along the right-of-way.

2. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)² to allow rail service to continue must be received by the railroad and the Board by June 5, 2000, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,000. See 49 CFR 1002.2(f)(25).

3. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left corner of the envelope: **“Office of Proceedings, AB-OFA.”**

4. Provided no OFA has been received, this exemption will be effective on June 25, 2000. Petitions to stay must be filed by June 5, 2000, and petitions to reopen must be filed by June 15, 2000.

5. Pursuant to the provisions of 49 CFR 1152.29(e)(2), B&M shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by B&M’s filing of a notice of consummation by May 28, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams
Secretary

² See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997).